

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOE D. MITCHELL, as Next Friend for
JOSEPH E. MITCHELL,

Plaintiff,

v.

DIVERSICARE HUMBLE, LLC D/B/A
OAKMONT HEALTHCARE AND
REHABILITATION CENTER OF HUMBLE,

Defendant.

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CASE NO.

(JURY REQUESTED)

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, Diversicare Humble, LLC d/b/a Oakmont Healthcare and Rehabilitation Center of Humble (hereinafter sometimes called “Defendant”) hereby removes this action, Cause No. 2015-76094, from the District Court of Harris County, Texas, 215th Judicial District Court, to this Court, pursuant to 28 U.S.C. §§ 1332 and 1441, *et seq.* (hereinafter “the Removed Action”). The undersigned counsel represents Defendant in this matter.

I. STATUTORY BASIS FOR JURISDICTION

1. Removal of this action is proper under 28 U.S.C. § 1441. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as it is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

A. Diversity of Citizenship

2. Plaintiff Joe D. Mitchell, as Next Friend for Joseph E. Mitchell, is a resident of the State of Texas.

3. Defendant Diversicare Humble, LLC d/b/a Oakmont Healthcare and Rehabilitation Center of Humble, formed under the laws of the State of Delaware, is a single member LLC with Diversicare Texas I, LLC as its sole member.

4. Diversicare Texas I, LLC, formed under the laws of the State of Delaware, is a single member LLC with Diversicare Leasing Corp. as its sole member.

5. Diversicare Leasing Corp. is a Tennessee corporation with its principal place of business in the State of Tennessee.

6. Defendant is a citizen of Tennessee.

7. Defendant is not a citizen of Texas. Accordingly, complete diversity exists and removal is proper.

B. Amount in Controversy

8. In his pleading, Plaintiff seeks monetary relief between \$200,000 and \$1,000,000.00. The damages alleged in Plaintiff's Original Petition are well in excess of the \$75,000.00 minimum jurisdictional limits for removal.

II. COMMENCEMENT OF THE ACTION

9. Plaintiff filed his Original Petition on December 18, 2015, seeking monetary damages based on a healthcare liability/nursing home malpractice claim.

10. Plaintiff's Original Petition and a summons were served on Diversicare Humble on January 11, 2016, thereby commencing the action against Defendant.

11. Pursuant to 28 U.S.C. § 1446(a), true and accurate copies of all process, pleadings, and orders served upon Defendant, and a copy of all papers filed in the Removed Action, are attached hereto as Exhibit "A." No other process, pleadings, or orders have been filed or served in the Removed Action.

III. VENUE AND TIMELINESS

12. The District Court of Harris County, Texas, 215th Judicial District Court, the Court in which the Removed Action was pending, is located within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

13. Defendant was first served with a copy of Plaintiff's Original Petition on January 11, 2016. Pursuant to 28 U.S.C. § 1446(b)(1) and (2), removal is timely if it is filed within 30 days after receipt of service of Plaintiff's Original Petition by Defendant. As a result, this notice of removal is timely.

For the reasons set forth above, the Defendant, Diversicare Treemont, LLC d/b/a Treemont Healthcare and Rehabilitation Center, removes to this Court the above-captioned case from the District Court of Harris County, Texas, 215th Judicial District Court, Cause No. 2015-76094.

Dated: February 9, 2016

Respectfully submitted,

OF COUNSEL:

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**ATTORNEYS FOR DEFENDANT
DIVERSICARE HUMBLE, LLC D/B/A
OAKMONT HEALTHCARE AND
REHABILITATION CENTER OF
HUMBLE**

CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of February, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to each counsel of record listed below. To the extent any such counsel is not registered for such electronic delivery, the foregoing document will be served in accordance with the Federal Rules of Civil Procedure.

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Via Electronic Service

By: /s/ Stephen R. Darling
Stephen R. Darling